

**United States Department of Labor
Employees' Compensation Appeals Board**

MAZIE M. THOMPSON, Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Durham, NC, Employer**

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**Docket No. 04-821
Issued: June 15, 2004**

Appearances:
Mazie M. Thompson, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On February 5, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated November 17, 2003, suspending her compensation benefits for failure to submit to a medical examination. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office properly suspended appellant's compensation benefits on the grounds that she failed to submit to a medical examination.

FACTUAL HISTORY

On August 13, 1992 appellant, then a 42-year-old nursing services escort, filed a notice of traumatic injury alleging that she injured her left knee when she slipped in the performance of duty on July 29, 1992. The Office accepted appellant's claim for sprain left knee, as well as torn medial meniscus left knee and authorized surgery. Appellant initially returned to work on

August 30, 1992. She sustained disability on October 14, 1992, July 20, 1993, July 1996 and August 28, 1997.

On December 12, 2002 appellant completed a Form EN1032 and indicated that her current address was 4001 Meriweather Drive, apartment B1, rather than 4001 Meriweather Drive, apartment F10 in Durham, North Carolina. By letter dated August 27, 2003 and addressed to appellant at apartment F10, the Office referred her for a second opinion examination. There is no indication in the record that this letter was returned to the Office. Appellant did not attend the scheduled appointment. By letter dated October 9, 2003, the Office informed her of the consequences of failing to appear for her scheduled medical examination and allowed 14 days for a response. The Office addressed this letter to appellant at apartment F10 and the letter was returned to the Office as undeliverable. The Office issued a final decision on November 17, 2003 mailed to the same address suspending appellant's compensation benefits effective September 12, 2003, on the grounds that she failed to submit to a medical examination. This decision was also returned to the Office as undeliverable.¹

LEGAL PRECEDENT

Section 8123(a) of the Federal Employees' Compensation Act² authorizes the Office to require an employee who claims compensation for an employment injury to undergo such physical examinations as it deems necessary. Section 8123(d) of the Act provides that, '[i]f an employee refuses to submit to or obstructs an examination his right to compensation ... is suspended until the refusal or obstructions stops.'³ If an employee fails to appear for an examination the Office must ask the employee to provide in writing an explanation for the failure within 14 days of the scheduled examination.⁴

A copy of the decision shall be mailed to the employee's last known address.⁵ It is presumed, in the absence of evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that individual.⁶ This presumption arises when it appears from the record that the notice was properly addressed and duly mailed. The appearance of a properly addressed copy in the case record, together with the mailing custom or practice of the Office itself will raise the presumption that the original was received by the addressee.⁷

¹ Appellant submitted additional new evidence before the Office after the November 17, 2003 decision. As the Office did not consider this evidence in reaching a final decision, the Board may not review the evidence for the first time on appeal. 20 C.F.R. § 501.2(c).

² 5 U.S.C. §§ 8101-8193, 8123(a).

³ 5 U.S.C. § 8123(d).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.14(d) (November 1998).

⁵ 20 C.F.R. § 10.127.

⁶ *Kimberly A. Raffile*, 50 ECAB 243 (1999).

⁷ *Id.*

ANALYSIS

The record shows that appellant completed a Form EN1032 on December 12, 2002 notifying the Office of her change of address from apartment F10 to apartment B1 on 4001 Meriweather Drive, Durham, North Carolina. Thus, she complied with the Office's instructions to notify it of a change of address.⁸ However, computer printouts dated July 24 and August 27, 2003 indicate that appellant's address was not changed in the Office's automated system.

It appears from the record that the Office failed to mail the notice of second opinion examination, the notice of failure to appear for medical examination and the final decision on November 17, 2003 suspending compensation benefits to appellant's new and proper address.⁹ The Office addressed these documents to appellant at apartment F10, rather than her proper address at apartment B1. Therefore, the presumption of receipt under the mailbox rule does not arise. Although the August 27, 2003 notice of the second opinion examination was not returned as undeliverable, the Office's October 9, 2003 letter notifying appellant of her responsibilities and allowing her 14 days to explain her failure to appear for the examination and the final decision dated November 17, 2003 suspending her compensation benefits were returned as undeliverable. Therefore, these notifications were clearly not mailed to the last known address in accordance with the Office's regulation and the resultant decision must be reversed and appellant allowed an additional opportunity to report for a second opinion examination prior to the imposition of the penalty provision of section 8123(d) of the Act in accordance with the Office's procedural requirements.

CONCLUSION

The Board finds that the Office did not properly suspend appellant's compensation benefits as the notice of the scheduled medical appointment, the proposal to suspend her compensation benefits and the final decision were not mailed to appellant's last known address.

⁸ *Marlon G. Massey*, 49 ECAB 650, 652 (1998).

⁹ 4001 Meriweather Drive, Apartment B1, Durham, North Carolina.

ORDER

IT IS HEREBY ORDERED THAT the November 17, 2003 decision is reversed.

Issued: June 15, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member